

spend months looking into the connections, trying to connect the dots with campaign contributions, foreign influences and administration actions. What he found is laid out in a 100-page memo he prepared for Janet Reno. We know this memo argues in favor of the appointment of an independent counsel to carry on the investigation.

But the memo itself has reminded secret, even though it has been subpoenaed by Congress. Janet Reno, who rejected its recommendation for an independent counsel, has refused to release the memo to the Congress or to the public. It is time for that memo to be released.

FBI Director Freeh has testified that the public knows only about one percent of what the FBI knows about the Chinagate scandal. It is time for the truth to come out. It is time for the public to get some sense of the other 99 percent which is contained in the LaBella memo.

Mr. President, over the last six years, President Clinton and his administration have shown a pervasive disregard for national security. In both actions and inactions, this President has broken ranks with the bipartisan consensus about national security that helped us win the cold war.

His policies and attitudes towards export controls, nuclear weapons, militarily important high technology, and dealing with our adversaries in the world—have been strikingly different from those of all of his predecessors in the modern era.

His administration has acted as if the end of the cold war gave them carte blanche license to open the commercial and technology floodgates to countries like China simply because it was good for business, or good for getting campaign contributions, or good for other domestic political reasons.

The traditional concern about national security—about protecting our nuclear secrets, about maintaining our military and technological superiority, about sanctioning those in the world who engaged in flagrant and hostile espionage and proliferation—all that went out the window, replaced by other priorities this President somehow thought were more important.

President Clinton claims he has “redefined” national security. In fact—as the Cox Report conclusively documents—he has “harmed” national security. This is the message that every American must understand.

My hope is that we never again have a President who is so disrespectful of, and inattentive to, traditional national security concerns.

Yesterday at the joint hearing of the Armed Services, Energy and Intelligence Committees, I asked whether or not it would be possible to put in place some safeguards so that no future President could ever again so successfully undo the country's national security defenses as this President has. We are working on an answer.

Some of us will continue to speak, out—seeing it as our highest duty of

public service. As I said on March 15—and repeat again here today—I only hope America is listening. We have a nation to save.

The truth will get out. Winston Churchill said:

Truth is incontrovertible: Panic may resent it, ignorance may deride it, malice may destroy it, but there it is.

I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, last evening Senator DASCHLE was prepared to offer an amendment to the agricultural bill that was at the heart of the Patients' Bill of Rights. I believe that will be offered shortly on behalf of the Senator from California, Senator FEINSTEIN. We will have an opportunity to get into that discussion and debate.

I am hopeful, as are others, that we can work out a process and procedure by which we can have a full discussion and debate on this issue, and where we can have an orderly way of disposing of various amendments on the Patients' Bill of Rights. I am, however, somewhat distressed and disturbed by some of the comments I have read this morning on the AP relating to my friend from Oklahoma, Senator NICKLES, the Republican assistant majority leader.

He said he was willing to vote on the issue if the Democrats would agree to limit debate, but he said he was worried that Democrats will pressure some Republicans into supporting amendments that will increase the cost of health care, and therefore the number of Americans without any insurance. He also said he was worried the Democrats will force votes that can be misconstrued for political purposes. He would rather allow a yes or no on the entire package with only a handful of amendments.

I have more confidence than the assistant majority leader in our colleagues' ability to make discerning decisions about the merit of these various amendments, and that having been elected by the people, we are charged to make judgments on these measures. This is a new reason for not bringing legislation to the floor. Apparently, one of the leaders is concerned the members of their party would not be able to exercise a balanced and informed judgment in the best interests of the particular States the Senators represent. Of course, if that is going to continue to be the position of the leadership, it does not bode well for a full discussion and debate on this issue.

We have seen for the last 2 years a policy of delay and denial of the ability

to debate the issues that we referred to yesterday and on other occasions, and which we will have an opportunity again to debate today. But it is out of frustration that Senator DASCHLE has used the unusual procedure of offering this legislation on an appropriations bill, in the hopes we can work out an orderly process or procedure. I certainly support that process, since we have effectively been closed out from any opportunity to debate this issue.

It is a simple, fundamental, basic issue: whether decisions relating to the health of patients in this country are going to be decided by the health care professionals who have the training and skill and competency to make those judgments and decisions, or whether the decisions will be made by accountants in the insurance companies or the HMOs. That is really the basis of this whole debate and discussion. That is why virtually every leading health care organization, virtually every major professional health organization—the spokesmen and spokeswoman for children, for women's health, for the disabled, and for the patients' coalitions—has universally supported our proposal.

It is not, certainly, because it says “Democrat” on it. These organizations support measures on the basis of the merits, whether they are proposed by Democrats or Republicans.

There is uniformity among the various groups and organizations that the basic, fundamental issue of who decides what is medically necessary is really at the heart of the whole debate. It is reflected in different ways, as we illustrated in the course of the discussion over the past few days and today, but that is basically what is at the core of this proposition.

The Democratic leader indicated that if we took up the Republican proposal that was passed out of committee on a party-line vote—even though we had more than 20 amendments at that time dealing with the substance of the issues—we would limit our side to 20 amendments. He indicated he would be willing to limit discussion of these various amendments to a reasonable time period, expecting the opposition would have similar amendments.

Frankly, though, if the Republicans have the opportunity to put their bill before the Senate, I do not understand why they would need a great many more amendments. They already have their bill. If we had our bill before the Senate, we would not have to have a great many amendments because it is our bill. I think we can all understand the logic of that. If we have a particular proposal before us, we ought to be able to debate the changes that may be offered from the other side.

The other side has the right, their right as the majority, to lay their bill down. So when we say we need 20 amendments and they say they will need 20 as well, I do not quite follow that. But so be it.

I think we will find from the discussions taking place at the leadership

level, and I heard the exchanges last evening, I heard from our leader he was prepared to move ahead. He urged there be cooperation by all Members. That certainly would be the case, I know, for those who are most involved in the Patients' Bill of Rights. They would be willing to expedite consideration of various appropriations bills with the understanding we will have an opportunity to debate this issue in a reasonable period of time with a chance to offer amendments.

We will hold the Senate accountable to answer the questions that parents have about their children and medical care: Will you will be able to get specialty care when a child has special needs, or just be given access to a general pediatrician? Will you get a pediatric oncologist if the child has cancer? What about access to new prescription drugs? Will children and others have access to the clinical trials?

The opposition fails to mention that gap in their program. The most they do about it is to include a study about clinical trials. I think most American families understand the importance of clinical trials in their family's life experience or their health care. They may not have been part of a clinical trial themselves—although my family has, my son has, and very successfully, I will add. But I doubt if there is a family that does not have a member of their extended family who has not been involved in those programs.

Patients need to have access to necessary prescription drugs. This is so important to many different groups in our society: those challenged with mental illness, those with disabilities or other chronic conditions. There are many in our communities who require those essential prescriptions drugs. We do not see those guarantees in the Republican plan. There was reference to those: They will get access to those—but at exorbitant prices. They didn't mention that. They said: We'll make sure they have access to those drugs—but the plan can charge exorbitant prices.

We will have an opportunity to come back to the issue on prescription drugs, though probably not on this piece of legislation. But there are important guarantees which we provide in our Patients' Bill of Rights. We will come back to those measures. They are important.

I will say a few words now about the subject matter that will be included in the amendment offered by the Senator from California. It will deal with medical necessity. This is an interesting concept, because it reaches the heart of this issue, this debate. When consumers sign up for health care coverage, they assume, I think—it is not presumptuous to assume this—they assume they will be able to get from their doctors and their health care facilities the best care that the medical profession has to offer. Right? Wrong. Our bill will ensure that the best care is given. Their bill does not.

You say: I do not understand that. Let me clarify it. The Republican legislation that was reported out of the Health committee permits the HMO to decide what is medically necessary. They let the HMOs decide what is medically necessary. Then, when you have a certain illness and your doctor believes you should receive X, Y, or Z treatment, but the HMO defines "medical necessity" in a particular way, your doctor is restricted in the kind of treatment they can give you to whatever it says in the particular contract.

I do not think most consumers, when they sign up for health insurance, look into or read the various definitions in those contracts. You have scores of different definitions, each allowing for abusive actions that can have devastating effects on the health of patients across the country.

We have one included in here from a HMO that happens to be in Missouri. This is what it says: X company, I will not mention the name here, will have the sole discretion to determine whether care is medically necessary. Here it is—a small provision in the contract that an individual may never see.

If they came in and said: The doctor says you may very well need to have this kind of treatment.

And then the HMO says: Oh, no, they do not need that treatment, it is too expensive.

And the patient says: Why? Is that in my best interests of my best health?

Maybe the doctor will say: Yes.

Then the person says to the HMO: My doctor says it is in the best interest of my health to have that treatment.

Then the HMO says: Let me tell you something. Our definition of what is medically necessary for you is in the sole discretion of our HMO. We say you don't need that treatment. You signed that contract, and that is what you are going to get.

Then the person says: I appeal. I appeal this. I appeal. I want the best.

Under the Republican proposal—listen to this—the HMOs will decide who will listen to that appeal. They will also decide that appeal on the basis of what the contract says. That person gets an appeal, and then it goes to their HMO. The appeal officer looks at this and says: Here it is, it is their sole discretion whether care is medically necessary. And that is it; you are out.

Then that person says: Maybe I will bring a case. Let's get this out into the courts. This is absolutely outrageous. It is violating the basic, common law of good medical treatment.

The patient does not get to the courts. It is nonappealable under the Republican proposal. You are stuck there, your child is stuck there, and your wife may be stuck there. A member of your family is stuck there.

What does our bill do? It says that plans must use the best evidence and practices to determine what is medically necessary. It uses the best up-to-date scientific information or, if that is not available, clinical practices.

At a hearing in our committee earlier this year, there was some question about the definition and the use of various words in our proposal. We said: You develop the words. We have tried to take those words, which have been recommended by the best practitioners and by the medical associations, and put those in the bill. If the opposition has better words, we welcome them, we will embrace them, we will include them. Work with us, and we will work with you. Do they understand what we are trying to get at? We want to ensure that any individual who signs up with a plan is going to get what professionals in a particular field believe is in their best interest.

I have in my hand 30 definitions of what is medically necessary, depending on the HMO. Why should American citizens play roulette, and allow their health care to depend on which HMO they are a member of? That is what is happening.

Is this such a revolutionary idea? It is not. This basic concept has been supported not only by the medical societies, the medical associations, nurses associations, but countless other patient groups and others. The only people who oppose it are those who seek to preserve the status quo. It is similar to what is used to treat our parents and our grandparents under Medicare, and we do not hear any complaints about it.

I ask any Member on the other side to bring in a single letter which demonstrates how that best standard of medically necessary is either being abused or not effective for those people under Medicare. Bring them in. Shouldn't that be the answer? Mr. President, 39 million Americans are being treated that way. Bring in the examples. I will give my colleagues examples on the other side. Let's debate that issue. Let the Senate decide. I will give my colleagues examples.

If my colleagues want to take a little time, I will go right through these and let the Senate hear this debate.

They may say on the other side: Is that some new idea, some crazy Democratic concept? We know it is being used today to treat our parents. They welcome it. It is good and sound.

We want to make sure people are protected. That is what we are concerned with. That is why this issue reaches the heart of the whole debate and why the whole question of medical necessity is of such importance.

If that is not a core factor, if we do not have the best judgments guiding what is medically necessary, and if we do not have the assurance this is going to protect the doctor to make that judgment, then this legislation is not worth the paper on which it is written.

We can name any bill a Patients' Bill of Rights. But if it has a medical necessity definition that is so construed as to deny people adequate protection or that and they are able to question the doctor giving the best information on the best medical process and procedure,

we are not giving those assurances that the consumers of this country need and deserve, and we will not avoid the human tragedies which we have heard mentioned day after day in the Senate. We hear instance after instance where timely treatment is being denied because doctors are not able to practice what is medically necessary.

This is the heart of this debate today. I can mention some other definitions. I see other colleagues in the Chamber who want to address the Senate. I am going to come back and review with the Senate some other definitions that have been included in the HMOs and how they have worked in ways which have been tragic to the medical profession.

I have a definition from another major HMO, one of the largest in the country. I am not interested in using names, but I will be glad to if Members are questioning this issue. This is their definition in use today:

Health care services that are appropriate and consistent with the diagnosis in accordance with accepted medical standards and which are likely to result in demonstrable medical benefit and which are—

Listen to this—the least costly of alternatives.

There it is, “least costly of alternatives.” Not what is in the best interest of the patient, not what can save that person's life, not what can reduce pain and suffering and offer the best hope and opportunity for the future but which is least costly.

Here is another HMO. This is the definition of medical necessity in another very prominent HMO:

... the shortest, least expensive or least intensive level of treatment, care or services rendered or supplies provided.

How many Americans, when they go in to look at their HMOs and sign that contract, say: Look, I have a health insurance proposal. Look what it's going to do. It's going to cover me and going to cover my family and going to cover my children, and going to cover my wife. This is what it's going to cost. This is what the drug benefit is.

How many are going to look at the fine lines and look into “medical necessities” and are going to wonder whether they are using the most modern and comprehensive care for “medical necessity.” Virtually none of them are going to. That is why we have so many examples of the kinds of tragedies that have been mentioned. We will talk about those later in the day.

I see my friend and colleague from California. We all look forward to hearing from her on the amendment she will be proposing.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Nevada is recognized.

Mr. REID. How much time is remaining for Senator KENNEDY?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes 30 seconds.

Mr. REID. The Senator from Massachusetts has 7 minutes. There are three of us. Will the Senator yield his time to the three of us to divide equally?

Mr. KENNEDY. I yield it to the leadership here, Senator REID, to allocate in whatever way he desires.

Mr. REID. Would the Chair advise the Senator when he has used 2½ minutes?

The PRESIDING OFFICER. The Chair would be delighted.

Mr. REID. Mr. President, the question always arises as to whether we have sufficient time in this body to take care of all the business before us, especially the appropriations bills, and still have time to properly handle the Patients' Bill of Rights? The obvious answer is yes.

We have had a number of bills brought before this body this year. We have had, for example, the military bill of rights with 26 amendments, the Education Flexibility Act with 38 amendments, the supplemental appropriations bill with 66 amendments, the first budget resolution with 104 amendments, and the budget process reform bill with 11 amendments. We are asking for 20 amendments. Certainly we have the opportunity to do that.

I agree with my friend, the Senator from Massachusetts, that we are talking about real people's problems. He has spent a great deal of time emphasizing the importance of the access to specialists.

I have a letter from a girl from Minden, NV, by the name of Karrie Craig. She wrote:

... my mother found out she had cancer [in] November 1997. After about two years of going in circles with her primary care physician, she was [finally] admitted to a urologist.

I ask unanimous consent the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXCERPT OF A LETTER TO SENATOR REID  
DATED 1/11/99 FROM KARRIE CRAIG OF  
MINDEN, NV

... my mother found out she had cancer November of 1997. After about two years of going in circles with her primary care physician, she was admitted to a urologist. Her primary care doctor had prevented this visit with a specialist until my mom was very sick. I believe that the HMO company looked down upon specialized doctor visits, as they are more expensive. What my mother found out was she needed an operation for a small growth, left in her bladder from birth. Actually, after surgery they realized she had advanced bladder cancer that only a sooner visit to urologist would have prevented. Within five months my mother died.

The only good thing about the HMO services was they provided us with Hospice services the last week and a half of my mom's life. I feel that HMO's policies of primary care physicians and the negative feelings they portray about specialists causes more problems that it solves. In the end, my mother cost the company more money than if she would have been permitted to see a specialist earlier.

Mr. REID. In short, this letter says that after the 2 years passed, it was too

late. Had her mother received permission to see a specialist early on, she may still be alive today. By the time she was referred to the specialist, a tumor had developed. It was later determined that she had advanced bladder cancer that a sooner visit to the urologist could have prevented. Her mother died. This is a real-life case that illustrates the importance of access to specialty care.

I hope the majority will allow us to go to the Patients' Bill of Rights at the earliest possible date. This is something we need the do.

I yield to my friend from Illinois 2½ minutes.

Mr. DURBIN. I thank the Senator from Nevada for yielding to me.

This debate really gets down to some very fundamental and basic questions about whether, when you go into your doctor's office and present yourself with an illness, you can trust that your doctor is going to be honest with you, tell you what is best for you or your family, or whether you have to worry about the fact that there may be some insurance company bureaucrat involved in this decision.

When it comes down to these basic life or death situations for a member of a family, there is enough emotional strain on an individual in trying to keep their wits about them, trying to keep their family together; but to think that you not only have to battle those things in your own mind but then, on a daily basis, battle the insurance company bureaucrats, that, to me, is the worst part of what we are debating.

I want to show you a photograph of a great little boy. He is 11 months old. His name is Roberto Cortes. He is from Elk Grove Village, IL—a cute kid, but a kid who has a serious problem, spinal muscular atrophy. He is currently on a home ventilator, as you can see in this photograph.

That is enough of a strain on any family—to try to make sure this little fellow has a chance to live a good life. But the sad part of this debate is that the parents of this little boy are self-employed. They have a little business.

The Republican Patients' Bill of Rights provides no protection whatsoever to self-employed people. Roberto Cortes and his family would not be protected at all by the Republican version of the Patients' Bill of Rights.

The Democratic version, supported by over 200 groups, representing doctors and hospitals and consumers and labor and businesses across America, would provide protection to the Cortes family. That is how basic this is.

When the Republicans tell us: We don't have time to debate this issue; we don't have time to debate whether or not you have a fighting chance when it comes to your health insurance, they are just wrong.

You are going to hear a lot about this issue from Members on the Democratic side. We are not going to quit until we get a chance to have this debate.

Since I see my colleague from California is here, and I know she has an important contribution to make to this discussion, I yield the floor back to the Senator from Nevada.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent that this side be granted an additional 15 minutes in morning business.

The PRESIDING OFFICER. Is there objection?

Acting in my capacity as an individual Senator from the State of Kansas, I object.

Mr. REID. I ask unanimous consent that the minority be granted 15 minutes of additional time in morning business and the majority be granted 15 minutes additional time in morning business.

The PRESIDING OFFICER. Is there an objection?

Acting in my capacity as an individual Senator from the State of Kansas, I object.

Mr. REID. Mr. President, how much time is left for the Senator?

The PRESIDING OFFICER. Two minutes 30 seconds.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized.

Mrs. FEINSTEIN. I thank the Chair, and I thank the Senator from Nevada.

Mr. President, when we return to the bill, it will be my intention to offer an amendment to the agriculture appropriations bill. I think that my amendment will deal with one of the most fundamental concerns in health care today; that is, the restoration to the physician of the basic right of patient care, patient treatment, and to be the determinant of patient care and the length of hospital stay.

I think one of the things we have seen emerge in health care throughout the United States in the past 2 to 3 years is the development of the so-called green eyeshade of an HMO determining what is appropriate patient care, regardless of the physical condition of an individual patient.

The amendment I will offer essentially says that a group health plan or a health insurance issuer, in connection with health insurance coverage, may not arbitrarily interfere with or alter the decision of the treating physician regarding the manner or setting in which particular services are delivered, if the services are medically necessary or appropriate for treatment or diagnosis to the extent that such treatment or diagnosis is otherwise a covered benefit. In other words, if you have coverage for a treatment in your plan, the physician determines that treatment based on you, based on your needs, based on your illness—not based on the calculation of a green eyeshade in a health insurance plan.

My father was a surgeon. He was chief of surgery at the University of California. My husband, Bert Fein-

stein, was a neurosurgeon. I grew up and lived a good deal of my life in a medical family. In all of that time, the doctors determined the appropriateness of care, the doctors determined the length of hospitalization, the doctors determined whether a particular treatment was suitable for an individual—not an arbitrary HMO, not physicians out of context of an individual physician and patient.

Every person sitting in this gallery today is different, one from the other. They are different in how they react to drugs. They are different in how they react to radiation—

The PRESIDING OFFICER. The time allotted to the distinguished Senator from California has expired.

Mrs. FEINSTEIN. If I may finish my sentence.

Mr. NICKLES. If I might just interrupt. I apologize. I was not on the floor earlier.

#### EXTENSION OF MORNING BUSINESS

Mr. NICKLES. I ask unanimous consent that each side have 20 minutes of additional time for morning business.

The PRESIDING OFFICER. Is there an objection?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The time has expired in regard to the Senator from California.

Hearing none, without objection, it is so ordered.

Mr. REID. Mr. President, I ask through the Chair to the Senator from California, how much additional time does the Senator need?

Mrs. FEINSTEIN. If I could have another 7 to 10 minutes at this time, I would appreciate it very much.

Mr. REID. How about 7 minutes?

Mrs. FEINSTEIN. I will do my best with 7 minutes.

Mr. REID. Okay.

The PRESIDING OFFICER. The distinguished Senator is recognized for 7 minutes.

Mrs. FEINSTEIN. I thank the Chair. I thank the Senator from Nevada.

At an appropriate time, I will submit that amendment.

Let me tell you some of the things we are increasingly told: That is, that doctors have to spend hours hassling with insurance company accountants and adjusters to justify medical necessity decisions—why a person needs another day in a hospital, why a patient needs an MRI, why a patient needs a blood test, why a patient should get a particular drug, this drug rather than that drug. Doctors increasingly say they have to exaggerate or lie so their patients can get proper medical care.

In USA Today, an article was run saying that 70 percent of doctors interviewed said they exaggerate patients' symptoms to make sure HMOs do not discharge patients from hospitals prematurely. Seventy percent of doctors indicate that they do not tell the truth about a patient's condition so they can

be assured that that patient gets adequate hospital care.

Now, is this what we want? I don't think it is. I think the doctor's decision, based on an individual's condition, should be the overriding decision that determines medical necessity. The amendment I will introduce will ensure that that happens.

In the HHS inspector general's report of June 1998, the following finding was made: Most doctors think working in a Medicare HMO restricts their clinical independence and that HMOs' cost concerns influence their treatment decisions. Mr. President, every patient is different and brings to a situation his or her own unique history and biology. Only a physician who is trained to evaluate the unique needs and problems of a patient can properly diagnose and treat an individual.

A Los Angeles doctor by the name of Lloyd Krieger said:

Many doctors are demoralized. They feel like they have taken a beating in recent years. Physicians train years to learn how to practice medicine. They work long hours practicing their field. Under this health care system, that training and hard work often seems irrelevant. A bureaucrat decides how doctors are allowed to treat patients.

Dr. Krieger says:

When I tell someone he is fit to leave the hospital after an operation, I am often given an accusing stare. Sometimes my patient asks: Is that what you really think or are you caving in to HMO pressure to cut corners on care?

Here's another example: A California pediatrician treated a baby with infant botulism, a toxin that spread from the intestine to the nervous system so the child really couldn't breathe well. The doctor prescribed a 10- to 14-day hospital stay. That doctor thought that length of stay was medically necessary for that particular baby. The insurance plan cut it short, saying the maximum that baby could remain in the hospital was 1 week. That shouldn't happen.

The amendment I will introduce at the appropriate time, and that I so hope this body will agree to, will ensure that medically appropriate and necessary treatment is prescribed by the physician and not contradicted by a green eyeshade.

I very much hope this body will accept it. I have introduced this kind of amendment now with Senator D'AMATO as a cosponsor and with Senator OLYMPIA SNOWE as a cosponsor. Perhaps the time has come to have the opportunity to pass this amendment and to get it done once and for all.

I thank the Chair, I thank the Senator from Nevada, and I thank the Senator from Massachusetts as well.

I yield the floor.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, is there an order for the conduct of business at this point?

The PRESIDING OFFICER. The Senate is now in morning business, with